

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

THOMAS E. WHATLEY, III., §  
§  
*Plaintiff*, §  
§  
V. § CASE NO. 4:11-CV-488  
§ Judge Clark/Judge Mazzant  
AHF FINANCIAL SERVICES, LLC, §  
ALPHINE H. FREEMAN III, and §  
X-RAY ASSOCIATES OF NEW §  
MEXICO, P.C., §  
§  
*Defendants.* §

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On September 17, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant X-Ray Associates of New Mexico, P.C.'s Motion for Judgment on the Pleadings [Doc. #30] be granted in part and denied in part.

On October 1, 2012, defendant X-Ray Associates of New Mexico, P.C. ("X-Ray"), filed objections [Doc. #50]. X-Ray only objects to the failure to dismiss plaintiff's claim under the Texas Debt Collection Act ("TDCA"). X-Ray does not object to the dismissal of plaintiff's Fair Debt Collection Practices Act ("FDCPA") claim. Plaintiff filed a response [Doc. #71].

X-Ray agrees with the Magistrate Judge's recommendation of dismissal of plaintiff's FDCPA claim against X-Ray, because X-Ray, as a creditor, is not a debt collector under the FDCPA. The Magistrate Judge also found that X-Ray could not be held vicariously liable under the FDCPA for

the actions of defendant AHF Financial Services, LLC (“AHF”). In its objections, X-Ray generally objects, asserting that the same logic the Magistrate Judge applied to the FDCPA claim should be applied to the TDCA claim. The Magistrate Judge addressed this claim and found that the TDCA definition of debt collector is broader than the definition of debt collector in the FDCPA, which includes anyone that “indirectly engages in debt collection.” X-Ray cites no authority supporting its notion that the TDCA would not allow such a claim. Furthermore, the Magistrate Judge was correct in denying this motion at this stage of the proceedings.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by defendant [Doc. #50], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that Defendant’s X-Ray Associates of New Mexico, P.C.’s Motion for Judgment on the Pleadings [Doc. #30] be granted in part and denied in part. Plaintiff’s FDCPA claim against X-Ray is DISMISSED. All other claims shall remain at this time.

So **ORDERED** and **SIGNED** this 11 day of November, 2012.



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Ron Clark, United States District Judge